

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
BRIEF &
APPENDIX**

76-1414

In The
United States Court of Appeals
For The Second Circuit

B
P/S

UNITED STATES OF AMERICA,

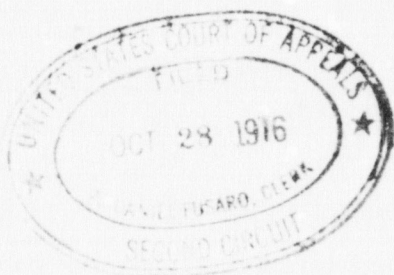
-against-

JOHN CALL

Defendant-Appellant.

**BRIEF AND APPENDIX FOR
DEFENDANT-APPELLANT**

NORMAN J. MORDKOFSKY
Attorney for Defendant-Appellant
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UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

----- X

UNITED STATES OF AMERICA,	:	Docket No. 76-1414
	:	
- against -	:	<u>BRIEF</u>
	:	
JOHN CALI,	:	<u>ON</u>
	:	<u>APPEAL</u>
Defendant-Appellant.	:	

----- X

PRELIMINARY STATEMENT

This is an appeal from an order of the United States District Court, Southern District, Hon. Milton Pollack, denying the motion of the defendant-appellant, JOHN CALI, for an order reducing his sentence pursuant to Rule 35 of the Federal Rules of Criminal Procedure.

The defendant and three others were charged in a four count indictment with the crimes of conspiracy to violate Sections 812, 841(b)(1)(A) of Title 21, United States Code and unlawful distribution of a Schedule I narcotic drug, to wit, cocaine in violation of Title 21, U.S.C., Sections 812, 841(a)(1) and 841(b)(1)(A) and Title 18, U.S.C., Section 2.

He entered a guilty plea to one count of conspiracy. Some of the other defendants pleaded to ^{still} other counts. The other defendants had prior records of conviction for crimes. Some had serious records, and pleaded guilty to more than one count. Each of the defendants with the exception of ~~JOHN CROCE~~ John Croce, was sentenced to serve four years in prison and three years on probation. John Croce was placed on probation for a period of two years.

The appellant had no prior convictions. There were voluminous transcripts of intercepted telephone conversations between the other defendants clearly showing their guilt. The Government had never intercepted any telephone conversations in which the appellant had been a participant, nor was his name ever mentioned in the conversations. Despite the apparent absence of evidence against him, the appellant entered his guilty plea.

The appellant was almost forty years of age. At the time of his arrest was a self-employed cab driver, married to a semi-invalid woman, the mother of his three sons, one of whom was married, the others attending high school and college, respectively. The couple had previously owned their own home, but were compelled to sell it because of financial need. The wife is now obtaining public assistance. The appellant's parents are living but his mother has a serious heart condition.

THE ISSUE

Under all of the circumstances of this case was the sentence of four years of imprisonment and three years probation imposed upon the appellant excessive, especially taking into account the fact that one of his co-defendants, who was, at least, equally, and probably more, culpable, was only placed on probation for a period of two years, because he indicated a willingness to testify against the others, were the matter to have been tried?

POINT

THE SENTENCES SUBJUDICE WERE AN ABUSE
OF JUDICIAL DISCRETION IN THAT THEY
REPRESENTED A REWARD WHERE NONE WAS
MERITED AND SEVERE PUNISHMENT WHERE LENIENCY
WAS DESERVED

The brief subjudice, coupled with the notion pursuant to Rule 35 of the Federal Rules of Criminal Procedure is an attack upon the ethic which erroneously pervades the criminal justice system in this county. It rewards the morally weak, the informant. In this nation the informant is put on a pedestal for approbation, although true moral enlightenment would indicate that condemnation is the order of the day.

It is sheer hypocrisy to emblazon the motto, "IN G-D WE TRUST" and proceed to destroy HIS LAWS. By so doing the moral fibre of this democracy is destroyed.

The flower of American youth was destroyed in a war against the G-dless Nazis, whose first tool of transformation, was the teaching of its youth that it was moral, indeed necessary for the survival of the state that they learn the lesson of informing, even upon parents.

The system rewards and punishments as illustrated herein are an indication of the extent to which this nation has allowed itself to become enslaved to the so-called narcotics problem. The dangers of the cure have already far outstripped the problem in terms of financial cost to the economy, and far more importantly to basic national morality. A condemnation of that philosophy by this Court, would be a strong step in the right direction.

CONCLUSION

The sentence imposed upon JOHN CALI, the appellant herein, under all of the circumstances of this case was excessive.

Respectfully submitted,

NORMAN J. MORDKOF SKY, ESQ.
Attorney for Defendant-Appellant
Office & P.O. Address
910 Sheridan Avenue
The Bronx, New York 10451
Tel. No. (212) 588-8500

0208 1 U.S. v. Call, John Case Filed Docket #
District Office Assigned Trial 10/30/75 1037 01
0848

U.S. Code Section Offenses Counts Magr. Case No.
75-1367

21:846 Consp to viol Fed 1
Narco. Laws
21:812,841 Distr. & posses. 4
of Heroin

Daniel J. Beller, AUSA
(212)791-1992

Norman Mordkofsky, Esq.
910 Sheridan Ave. Bronx, N.Y.
588-8500

ARREST Indictment
10/9/75 10.30/75
10/8/75

ARRAIGNMENT
11/10/75
1st plea
11/10/75
Final Plea
3/19/76 Guilty
INITIAL APPEARANCE 10/8/75
xNot waived
Date scheduled 10/28/75
INITIAL NO. HJR 080D

Sentence 5/3/76
xConvicted
xOn lesser charge
Arrest Warrant 10/3/75 SSo8oE
COMPLAINT 10/3/75 SSo8OE

OFFENSE 21 USC 812, 814(a) 841(b) (1) (A) Narcotics
Giordano-2; Black-3; Croce-4.
11-30-75 Filed Indictment. Superseding 75 Cr 768 and referred
to Judge Pollack.

11/10/75 Deft. pleads not guilty (atty. present) Bail \$10,000.00
secured by \$1,000. cash cont'd. Weinfeld. J.

11/21/75 Filed deft's. notice of motion re: dismissal, b/p, etc.

11/28/75 Filed Govt.'s aadv. re: opposition to motion for
dismissal b/p, discovery and severance and
separate trial.

11/28/75 File Govt.'s memo. of law re: opposition to pre-trial
motions.

12/1/75 Filed memo-end. on motion docketed 11/21/75,,, Deft.'s
motions for dismissals of the indictment and for
severance are denied. His motion for a bill of
particulars and discovery is granted to by the
Govt. in its answering papers to this motion,
otherwise denied. Pollack, J. mn

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DOCKET ENTRIES

File deft.'s acknowledgement of constitutional rights.

12/9/75 Filed Govt.'s notice of readiness for trial.
Det. (atty. Norman Mordkofsky present) now
pleads guilty to count 4 only. Cts 1, 2 & 3 carried
until date of sentence. Pre-sentence report
ordered. For sentence 5/3/76 at 10 A.M. Rm. 1306
Bail cont'd. on condition that the deft., report
every Monday to the U.S. Marshal's office
between the hours of 10 A.M. and 12 noon.
Pollack, J.

5/3/76 Filed Judgment * (atty. Norman Mordkofsky present)
Ct. 4-4 yrs. Impr. 3 yrs. S.P. 21:841. Cts.
1, 2 & 3 dismissed on deft.'s motion.
(Pollack, J.)

5/21/76 Filed J. & C. and marshal's return, det. delivered
to MC.C 5/3/76

5/02/76 Filed Notice of Appeal from judgment of 5/3/76
mailed copies.

A. E. Thompson
Deputy Clerk

Raymond F. Burghardt
Clerk of the Court

NOTICE OF MOTION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X

UNITED STATES OF AMERICA,

- against -

JOHN CALI, VITO GIORDANO, KENNETH
BLACK and JOHN CROCE,

Defendants.

----- X

:

:

:

:

:

Indictment No. 875 Cr. 1037

NOTICE OF MOTION

S I R S :

PLEASE TAKE NOTICE that, upon the annexed affidavit of NORMAN J. MORDKOWSKY, ESQ., duly sworn to the 15th day of July, 1976, and upon all the pleadings and proceedings heretofore had herein, the undersigned will move this Court (Hon. Milton Pollack, United States District Judge), at the courthouse located at Foley Square, County of New York, City and State of New York, on the 4th day of August, 1976, at 9:30 o'clock in the forenoon, or as soon thereafter as counsel can be heard, pursuant to Rule 35 of the Federal Rules of Criminal Procedure for an order reducing the sentence of the captioned defendant, on the grounds that the sentence imposed upon the defendant on May 3, 1976, was excessive under the circumstances, and for such other and further relief as to this Court may seem reasonable and proper.

Dated: July 15, 1976
The Bronx, New York

Yours, etc.,

TO: THOMAS J. CAHILL
United States Attorney, So. District
United States District Courthouse
Foley Square
New York, N. Y.

NORMAN J. MORDKOWSKY, ESQ.
Attorney for Defendant, CALI
Office & P.O. Address
910 Sheridan Avenue
The Bronx, New York 10451
Tel. No. (212) 588-8500

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

UNITED STATES OF AMERICA,

. Indictment No. S 75 Cr.1037

-against-

. AFFIDAVIT

JOHN CALI, VITO GIORDANO, KENNETH
BLACK and JOHN CROCE,

Defendants.

-----X

STATE OF NEW YORK)
COUNTY OF BRONX) ss.:
SOUTHERN DISTRICT OF NEW YORK)

NORMAN J. MORDKOWSKY, ESQ., being duly sworn deposes and
says:

That I am the attorney for the captioned defendant JOHN CALI,
and have prepared this affidavit in support of a motion for an order
reducing the sentence heretofore imposed upon him.

Heretofore, to wit, on May 3, 1976, upon his plea of guilty
to the crime of Conspiracy, in violation of the fourth count of the within
indictment, the defendant was sentenced to serve a term of imprisonment
of four (4) years, plus an additional three (3) years of probation.

During the course of the imposition of judgment, your
deponent urged upon the Court inter-alia, that one of the factors that
should be taken into consideration was the sentence imposed upon one of
the co-defendants, to wit, JOHN CROCE, he had also entered a guilty plea
but, he was placed on probation for a period of two (2) years.

-1-

Affidavit of Norman J. Mordkofsky in Support of Motion

During the course of the sentencing procedure, your deponent suggested that the reason that John Croce was placed on probation was because he had cooperated with the government to the extent of expressing a willingness to testify on its behalf. Your deponent suggested that by having done so, John Croce did not show any strength of character, because he had not made the offer out of any deep-seated personal conviction that he himself had wronged society and wished to make amends. Rather, that John Croce was seeking only to feather his own nest at the expense of others and, therefore, such conduct rather than being commendable, should be condemned.

The Court on the other hand, noted that JOHN CALI, the defendant herein had also been given an opportunity to provide further information to the authorities, but had chosen not to do so. This Court suggested, that JOHN CALI's failure to cooperate might be an indication that he was not remorseful or penitent.

Your deponent respectfully suggests, that when JOHN CALI, decided that he would not inform upon others, that his conduct was based upon a more altruistic conviction that those who have wronged others must be personally responsible for what they had done and, further that being an informant is not morally acceptable conduct.

The first lesson your deponent learned in a kindergarten class was that nothing was more reprehensible than being a tale bearer. The teacher stated that no one can ever absolve himself of wrongdoing by bearing tales against others. That lesson, learned decades ago, continues to be a guiding principle.

Affidavit of Norman J. Mordkofsky in Support of Motion

Your deponent made a plea for leniency on the defendant's behalf. It was suggested to the Court that there were theological underpinnings for the attitude of the defendant herein. The Court, conversely suggested that your deponent's interpretations would probably not be acceptable to the rabbis. Your deponent respectfully submits that those contentions are, in fact, uniformly accepted by the rabinate and are at the very foundation of Jewish theological teachings. Hereinafter set forth are some Halachic (Jewish law) precedents.

It is uniformly conceded that the greatest legal scholar in Jewish history was not a lawyer, but rather the Sultan's personal physician, Moses Maimonides, also known as the "Rambam". In his "Ishneh Torah", also called the, "Yad Hachazakah", commenting upon the talmudic tractate, "Nezikin", translated as the, "Laws of Damages", in Chapter 9 Section 8 he stated:

"The testimony of a voluntary informant is inadmissible in evidence because he is called a wicked person, hence his oath is invalid."

Thereafter the Rambam continued in Section 9, that an informant, "loses his share in the world to come". The non-Jewish equivalent of the "world to come" is the same as saying that such a person cannot go to heaven.

Although the Talmud had generally outlawed capital punishment, the Rambam continued in Section 10:

Affidavit of Norman J. Mordkofsky in Support of Motion

"It is permissible to kill an informant in any place he is found even though there are no laws of capital punishment in our times. He may be killed before he carries out his intended act. As soon as he says he is planning to give over a person, or even a small amount of money, he has subjected himself to being killed. He should be warned not to inform. If he, nevertheless, boldly says, 'No, I do not care', but says he will, nevertheless, inform, it is a mitzvah to kill him and his killer is considered to having done a virtuous act."

Therefore, it can be readily seen that in the Talmud which outlines the most enlightened of all systems of criminal jurisprudence, a system which otherwise mandates that every accused be given a fair trial and otherwise prohibits the killing of another human being, sanctions the killing of an informer without a trial, and the killer earns a mitzvah.

Centuries later, Jewish law was recodified in the "Shulhan Arach" (Code of Law) by Rabbi Joseph Caro. In Section 388, of that work entitled "Laws of Destruction of Property", Par. 8, Caro reiterates and endorses the teachings of the Rambam on the subject of informers.

More recently, in a definitive work called "Orach Hashulhan", Rabbi Yicheal Michal Epstein, a nineteenth century scholar, also in Section 388, Par. 19, repeats the philosophy of Rabbi Caro, but adds that the requirements of "Warning" which usually must always otherwise precede the imposition of capital punishment, may be omitted when executing an informer. In addition, Rabbi Epstein concluded that the informer, during the course of his own trial may be: deprived of the, otherwise guaranteed, right of confrontation; held vicariously liable for the acts of an agent who he has directed to inform; and that the informant's words constitute a crime. That is also an exception to the rule that words alone cannot constitute a crime.

- 4 -

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Affidavit of Norman J. Mordkofsky in Support of Motion

The "Jewish Press" is an English language newspaper which carries topics of interest to the Orthodox Jewish community. On May 28, 1976, at p. 40 the "Jewish Press" carried an article entitled, "The Informers, by Mordecai Bar Lavoy". The first two paragraphs of that article read as follows:

"One of the more peculiar characters found throughout Jewish (h)istory has been the informer. While normally the Torah laws contain due process of law for corporeal and capital transgressions (with witnesses, the Beth Din, and presentation of proper evidence) and their enforcement, an exception is made with the informer. According to Talmudic law, informers are to be executed without trial or witness, and by anyone who discovers their existence. Even after the destruction of the Second Temple, whereupon the death penalty was discontinued, the informer was not spared.

Who is defined as an informer? In Halachah, there are two types of informers: one, a Jew who informs on fellow Jews to the government, and causes their death or imprisonment; two, a Jew who informs on his fellow Jew and causes him loss of money or property (such as informing the government of tax-evasion, etc.). Both of these types of informers may legally be stopped through any means at our disposal, without the normal due process of law. The reason for this ultra-extreme measure is given by the many commentaries as a protective measure against traitors among the Jewish people, who cause deaths and great damage in the nation. They are judged as 'rodaf achar chavero l'hargo' (a murderer caught chasing his victim, where all must be done immediately to save the victim, even to kill the chaser on the spot, without arrest or trial, even before he has actually committed any crime). In other words, this is an act of self-defense, which the Torah and all civil law not only allows, but demands."

Hence, it may be readily seen that when the Court criticized counsel for the defendant during the course of the pre-sentence plea for leniency on the grounds that there was no foundation in Torah law, for counsel's plea, the Court was in error.

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Affidavit of Norman J. Mordkofsky in Support of Motion

It is further respectfully submitted to the Court, that a full and complete pre-sentence report, would have revealed that the defendant rather than being a danger, was an asset to the community. He was born to an undistinguished family. His father, John Cali, Sr. was born in New York City, sixty-seven (67) years ago. His mother, Emilia, was born sixty-four (64) years ago. They have always lead exemplary lives and neither have had any conflict with the law. JOHN CALI, the defendant herein, has lead a law-abiding life and has had one (1) minor brush with the law and that case was dismissed. The pre-sentence report will show that he has been a good father to his children and a good husband to his wife. He raised three (3) sons and gave them the finest education his limited financial resources could afford. He taught them to be good citizens and active participants in their community.

One of his sons, John, Jr., was selected to be a member of the All-City Baseball Team. Baseball has been an important part of the defendant's life and he devoted a good deal of his time and effort to teaching other youngsters how to play the game. There are members of the community who believe that there are hundreds of youngsters who have been set on the right road because they participated with baseball teams which were coached by the defendant, JOHN CALI. His neighbors have also commented about the great assistance he offered them in teaching them and their children the English language and helping their children with their school work.

Affidavit of Norman J. Mordkofsky in Support of Motion

The defendant, JOHN CALI, was always a great asset at home. His wife is a semi-invalid who suffers from a herniated disc. Without her husband's assistance, she is virtually unable to perform the necessary tasks of a housewife and since her husband has been away, she has suffered. This is especially true because the Cali family was always a closely-knit one. During their entire family life, they were never separated for so much as one (1) day before the defendant was incarcerated. Mrs. Cali says that she finds that their period of separation is almost unbearable. Although she has two (2) fine sons still living at home, she feels they need the influence of their father and fears what might happen while he is out of the home.

In addition to her inability to perform housecleaning functions and to go shopping, she has found herself totally without resources and has been required to seek public assistance and is presently on the welfare rolls in The City of New York. She is unable to cope with her present situation.

The defendant's mother has a heart condition and it is medically felt that prolonged incarceration of her son may terminate her life. Defendant's father, a hard-working, but now retired butcher, a man of great physical and mental strength, is on the verge of collapse.

It is respectfully submitted to this Court that the punishment which the Cali family has been made to endure is not constant with the crime as charged and that punishment is far more than any family should be asked to bear because of JOHN CALI's wrongs.

Affidavit of Norman J. Mordkofsky in Support of Motion

This Court is respectfully urged to exercise its discretion and utmost leniency in reducing the sentence of the defendant herein.

WHEREFORE, it is respectfully requested that an order be made and entered granting the relief requested in the Notice of Motion annexed hereto and granting such other and further relief as to this Court may seem just and proper.

NORMAN J. MORDKOPSKY

Sworn to before me this
day of July, 1976.

TRANSCRIPT OF PROCEEDINGS DATED MAY 3, 1976

1 jhmch

2 UNITED STATES OF AMERICA

3 v. 75 Cr. 1037

4 JOHN CALI, VITO GIORDANO and
5 KENNETH BLACK

6
7 Before: HON. MILTON POLLACK, District Judge.
8

9 New York, New York - May 3, 1976
10

11 For the Government: STEVEN M. SCHATZ, Esq.

12 For Defendant Cali: NORMAN MORDKOFKY, Esq.

13 For Defendant Giordano: FRANK LUCIANO, Esq.

14 For Defendant Black: JOHN P. CURLEY, Esq.
15

16 - - -
17

18 (In open court)

19 THE CLERK: United States of America v. John
20 Cali for sentencing.

21 MR. SCHATZ: The Government is ready, your
22 Honor.

23 THE COURT: Mr. Mordkofsky, is there anything
24 that you want to say on behalf of Mr. Cali before imposition
25 of sentence?

1 jhmch

Cali

2

2 MR. MORDKOFKY: Yes, I do, if the Court
3 pleases. I know, if the Court pleases, that the Court
4 has been afforded with a comparatively extensive prepleading
5 investigation report.

6 I feel, however, that with the Court's per-
7 mission I am constrained to make great comment concerning
8 that report, because the portrayal of the John Cali in
9 that report is quite different from the John Cali I have
10 come to know during these past seven months.

11 I have also found that the report, comprehensive
12 though it purports to be, in many respects leaves out
13 so many factors concerning this man and the value of him
14 as a humane, concerned and considerate individual that
15 I must comment and bring to the Court's attention much of
16 his background.

17 The defendant John Cali is 42 years of age.
18 He had but one prior conflict with the law. Some years
19 ago he was arrested and charged with the crime of bookmaking
20 He was acquitted, and that, I wish to emphasize, therefore
21 leaves this defendant with no prior conviction for
22 crime whatsoever.

23 Very early in his life, when he was 16 years of
24 age, he met Dorothy Leroy, his true love, who he married.
25 He was 16, as I have indicated.

jhmch

Cali

3

Approximately a year later, a little more than a year later, the couple was blessed with a son, Robert. During the course of Robert's lifetime living with his family, the Calis made a sincere effort to educate their son properly. From the very outset he was sent to the finest parochial schools here in New York City and in the Borough of the Bronx, and when he graduated from a parochial high school -- withdrawn. He went to a parochial school in the Bronx. For high school he went to Salesian School in New Rochelle. Prior to that, he had attended Our Lady of Grace in the Bronx.

Upon his graduation from Our Lady of Grace he was sent to Artesia College in New Mexico.

It seems that the one factor that was very strong in the background of the Calis and of their young son was the ability of the defendant John Cali to play baseball, and his concern about baseball and the concern of his young son as well, and all during the youngster's career, John Cali did the one thing that he was able to do best. He was able to play with the young man and coach other teams with which the young man had association, and John Cali began to devote his life to this son and to other youngsters in recreational programs.

Shortly after the birth of their first son

jhmch

Cali

on April 13, 1957, the couple was blessed with another son, John Jr. He also went to parochial school, St. Francis in New York City; then St. Raymond's, and then went on to Nassau Community College.

The most eventful thing in John Jr.'s life also was his ability to play baseball, and John Jr. became an all-city baseball player some years ago, before he went on to college.

This young man has potential and may someday become a major league baseball player, largely through the efforts of his father and mother, who carefully nurtured him through his career, watched him, were careful to see that he attended school, that he maintained a good record in school, and did everything that a parent could be expected to reasonably do for a child.

They also have a third son. His name is Michael, and he will be graduating from St. Francis High School in -- withdrawn -- St. Francis elementary school in June. Excuse me, your Honor. Michael graduated from St. Francis in June of 1963.

Now, Mr. Cali's life himself was comparatively uneventful. He went to Christopher Columbus High School. He left at 16 and went out to work. He became a butcher. He followed in the footsteps of his father and for many

jhmch

Cali

5

years he worked in that trade. He was a union member and he worked in various stores.

It got to be a point where he felt he could not succeed in that field any longer and he then became a self-employed painter in 1966. Shortly thereafter, with money that he had amassed during the course of that self-employment, and largely with funds that he had borrowed from his father, who is seated in the courtroom, they purchased the house in which they live right now.

Some three years later they found that they were not really making a go of it, and they decided that they were going to move to Florida, and they sold their house and became a tenant in a house, hoping one day to move. They were unable to do so.

Once again, largely with funds that they had borrowed from Mr. Cali, Sr., Mr. and Mrs. Cali were able to purchase a New York City taxicab and medallion, and Mr. Cali continued working as a medallion taxi driver.

So, all during the course of his life, he has maintained a solid work record, has managed to not have any serious conflict with the law, and has managed to have no convictions whatsoever.

It is unfortunate that some time ago his wife became quite ill. She started to suffer from severe back

1 ihmch

Cali

6

2 pains. She sustained a herniated disc. And, I might
3 mention parenthetically, I myself was unfortunately afflicted
4 with the same problem and I know the great pain and the
5 great difficulty that one encounters having this particular
6 illness.

7 The illness became a little bit more expensive
8 than the Calis could possibly afford, and it became
9 necessary for John Cali to amass a little more money than
10 he was able to have, and he foolishly, stupidly and
11 without any good common sense got himself involved, although
12 not deeply involved, in the narcotics traffic, and here
13 he stands today before the Court, having entered a plea
14 of guilty as a result of one of the crimes with which he
15 was charged.

16 I respectfully suggest to the Court that the
17 individual John Cali, as portrayed in the report, is not
18 the individual that is the John Cali that I know him to be.

19 Amongst other things, he has living as the
20 owners of the house in which he is a tenant -- they are
21 immigrants. I know for a fact that John Cali has devoted
22 long hours and continues to devote long hours to helping
23 the youngster with his school work, although he himself,
24 John Cali, certainly is anything but a genius and anything
25 but a brilliant person or a scholar. But he saw in his

1 jhmch

2 own humble way that something he could do would be to
3 help this other youngster.

4 In addition to which, I am sure the Court has
5 in its possession letters from other persons in the
6 community to show that in a small way this defendant has
7 contributed to the welfare of the community. He hasn't
8 been the kind of person who has been a major organization
9 man. That's not within his mentality. But the limited
10 ability that he has had he has exerted, he has done the
11 things that he can do. He has worked with the Amvets,
12 although he is not a veteran himself. He has worked
13 with countless numbers of youngsters in Little League
14 teams and in other athletic endeavors. And he has really
15 proven himself to be an asset to the community; as a matter
16 of fact, such an asset that most members of the community --
17 not all, I might say -- were utterly and completely shocked
18 when they learned that he had been involved in this
19 difficulty. They couldn't believe it at all.

20 I next respectfully suggest to the Court that
21 the Court must, in considering the judgment to be meted
22 out to this defendant, consider three basic factors
23 concerning itself with the possibility, or determining
24 whether or not this defendant is to be incarcerated.

25 I suggest, number one, that the Court must

1 jhmch

Cali

8

2 concern itself with whether or not this defendant requires
3 punishment, whether or not he has been penitent, and
4 whether or not Society requires protection from this
5 defendant.

6 As far as punishment is concerned, I can only
7 paraphrase what we have heard time and time again during
8 the past two or three years when, unfortunately, so many
9 persons in high position have involved themselves or been
10 involved in difficulty, and we have heard time and time
11 again counsel on their behalf saying he suffered enough,
12 and we heard that on behalf of -- unfortunately, on
13 behalf of the president, we heard that, unfortunately, on
14 behalf of the vice president as well. And that particular
15 concept was accepted.

16 I might suggest that the immensity and the
17 enormity of the punishment that this defendant has gone
18 through, the suffering that he has gone through in the
19 period of time that has elapsed since the time he was
20 indicted until the time he took the plea, until this very
21 day, is of great level, and that this defendant has suffered
22 tremendously.

23 The next question is, is he penitent? I
24 think that in his own simple way this defendant had
25 advised the probation officer that he is very much sorry

1 jhmch

Cali

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2 about his involvement in this situation, that he is
3 terribly concerned, that he would not be involved in it
4 but for the fact that he found himself in tremendous
5 difficulty.

6 Also, I would point out to the Court as
7 evidence of his penitence -- I think the Court may have
8 heard all of the tapes in this case during the course of
9 certain hearings. The Court will probably note not once
10 did the voice of this defendant appear, not once was
11 his name mentioned, either directly or indirectly.

12 That being the case, I would point out to the
13 Court that the evidence against this defendant was very
14 thin, if existent at all. And yet, because of his feeling
15 of penitence, because of his feeling toward his fellow
16 human beings and the relationship between himself and
17 the other defendants, he felt that it would be in the
18 best interests of Society for him to enter a plea of
19 guilty, although, I might suggest to the Court, there was
20 a strong possibility, not necessarily a probability,
21 that he might have sustained an acquittal in this case.

22 The third is whether or not Society requires
23 protection from this individual. I think, your Honor,
24 that it is quite clear that no matter what happens to him
25 today, and if the Court could possibly see fit to exercise

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2 extreme kindness and to permit this defendant to remain
3 in Society, that Society does not have to worry about
4 John Cali, that Society has nothing to fear at his hands,
5 that, quite on the contrary, Society has benefited from
6 John Cali's presence in the Society and would continue to
7 do so were he permitted to remain a member of Society.

8 Next, if the Court pleases, I know that one
9 of the other factors the Court will consider is a statement
10 made in the probation report to the following effect, that
11 Giordano and Cali are considered to be suppliers and,
12 therefore, pegated to a greater degree of culpability
13 than Messrs. Black and Croce.

14 I might suggest to the Court there is not a
15 scintilla of evidence anywhere in the record to indicate
16 that this defendant is or ever was a major supplier in
17 the narcotics trade. As a matter of fact, I think that,
18 if careful investigation were made, he was on the barest
19 of bare fringes, and that it is a conclusion which is
20 totally without merit. There is no substantiation of that
21 conclusion and nothing mentioned in the report.

22 Lastly, if the Court pleases, I respectfully
23 submit to the Court that one of the other factors that
24 the Court must take into consideration is the punishment
25 meted out to others who were similarly situated. I

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2 understand that the Court has already imposed judgment
3 on Mr. Croce and that the imposition of sentence has been
4 suspended, and that he has been placed on probation for
5 a period of three years.

6 Without casting any aspersions as against him
7 concerning the evidence in this case, although in other
8 respects I might discuss it, Mr. Croce, according to what
9 we see in the tapes, was very, very deeply involved
10 in this entire proposition. We see that he talks about
11 large sums of money. In one of the tapes he talks about
12 twenty big ones, which I understand, of course, to be
13 \$20,000. He makes himself to be quite the big shot.

14 Mr. Croce, of course, did something that
15 John Cali didn't see fit to do. Mr. Croce decided that he
16 would become an informant against a fellow human being,
17 not out of a sense of remorse, not out of a sense of
18 righteousness, not out of a sense that he was helping
19 Society, but merely out of a selfish motive, a motive
20 to help himself and to gain for himself a noncustodial
21 sentence.

22 If the Court pleases, I don't know whether
23 it's a subject of legitimate consideration for the Court,
24 but I might mention in a very enlightened system of
25 criminal justice, jurisprudence, that found in the Talmud,

1 jhmch

Cali

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2 which is very, very liberal, and far more liberal than
3 any one we know on the face of the earth today, in that
4 particular system of jurisprudence every man is entitled
5 to a fair trial, and every man, there is an effort made
6 to find innocence for anyone charged with crime, with one
7 exception -- the informant.

8 The informant is a person who is considered to
9 be below contempt, the lowest member of Society, and it is
10 considered that he has no place for salvation in the
11 hereafter, and as a matter of fact the Talmud permits,
12 when an informant is found abroad in Society, that a human
13 being, without giving him a trial, has a right to kill
14 him on the spot.

15 This informant, who we now consider to be
16 below contempt, was placed on probation for a period of
17 three years. I don't know that much about John Croce's
18 background, but I respectfully suggest to the Court that
19 John Croce was not the asset to Society that John Cali has
20 been. I don't believe that John Croce brought up three
21 fine youngsters. I don't believe that John Croce sent
22 them to fine parochial schools and worked and slaved to
23 put them through school. I don't believe that he has been
24 a father of children, a husband to a fine wife, and has
25 been a valued member of Society.

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Cali

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2 If the Court, in its infinite wisdom and in
3 its mercy, could have shown that extent of mercy to
4 John Croce, I respectfully suggest that amount of mercy
5 should equally be shown to Mr. Cali. I believe he is
6 entitled to at least one break, one opportunity to prove
7 himself to the Court that he is a valued member of Society
8 and should be continued to remain abroad within Society,
9 and I respectfully commend him to your Honor for such
10 leniency as the Court may show to him, and I am respectfully
11 requesting the Court not to impose a custodial sentence
12 upon him.

13 THE COURT: John Cali, is there anything that
14 you want to say on your own behalf before imposition of
15 sentence?

16 DEFENDANT CALI: Well, counsel has just about
17 stated it all, your Honor, except that I realize my mistake,
18 I am sorry for it, and it could never happen again.

19 THE COURT: Kind of a disastrous mistake for
20 those who find themselves in the position of taking this
21 nefarious drug. This is just not like driving through
22 a red light. This is destroying human lives, and you did
23 it willingly and knowingly and for money.

24 Is there anything the Government wants to say?

25 MR. SCHATZ: Yes, very briefly, your Honor.

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Cali

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2 Of course, the Government doesn't take any
3 position with respect to a specific sentence that the Court
4 should impose, but we feel constrained to take issue with
5 a few comments that Mr. Mordkofsky made.

6 In no sense does the Government concede that
7 Mr. Cali was not deeply involved. The relationship
8 between any evidence on the tapes is just not a viable
9 issue.

10 Our position is that Mr. Cali was a man behind
11 the scenes, at least partially calling the shots. Second
12 of all, with respect to the issue of penitence, we think
13 it is of some pertinence that Mr. Cali today has not
14 offered to provide any information, which information we
15 believe he has a great deal of.

16 MR. MORDKOPSKY: May I briefly respond, if
17 the Court pleases?

18 THE COURT: Yes.

19 MR. MORDKOPSKY: I think John Cali shares the
20 opinion that I have concerning people who are informants
21 in our society.

22 THE COURT: I don't. You can go on to something
23 else. And I don't believe that you correctly portray the
24 Talmud at all. But that is not what the purpose of this
25 hearing is. The rabbis would be shocked to hear your

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Cali

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2 analysis of the Talmud and the administration of Hebraic
3 law.

4 You may go on to something more pertinent here.

5 MR. MORDKOWSKY: Your Honor, it was my
6 understanding that as part of the understanding in taking
7 this plea the Government would indicate to the Court no
8 position whatsoever and would say nothing to the Court
9 concerning this matter.

10 THE COURT: They haven't indicated any position,
11 other than to indicate that they are not accepting and
12 swallowing with full faith and credit the things that you
13 are saying.

14 MR. MORDKOWSKY: Your Honor, I have carefully
15 culled through the evidence in this case and did so in
16 preparation for the trial of this case.

17 To the best of my knowledge, the only evidence
18 that exists against this defendant is in two facets. He
19 is alleged to have been and admits having been present
20 at the meeting at Howard Johnson's, and during the course
21 of that meeting, unfortunately, there was no tape recording
22 whatsoever taken at the time. We feel that were there a
23 tape recording and were there an accurate report of what
24 took place at that meeting we would discover that the whole
25 subject of the meeting was that there was an allegation

1 jhmch Cali 16

2 that someone had improperly taken 1,200, not 12,000, as
3 the report reveals, some \$1,200, and that that \$1,200
4 should, as a debt of honor, be repaid.

5 Secondly, it is my understanding that with
6 respect to the one count in which the defendant did enter
7 a plea of guilty, the evidence against this defendant
8 was that he was seen somewhere in the area, that initially
9 a meeting was set up between two -- withdrawn -- between
10 one other participant in the crime and the undercover
11 officers. Thereafter, that other participant is alleged
12 to have driven in the direction of this defendant's home,
13 to have gone into the defendant's home, and that to my
14 knowledge is the extent of the evidence against the
15 defendant.

16 There is no recording of what allegedly took
17 place, there is nobody who saw anything pass, and it does
18 appear that it was unfortunate that on two occasions during
19 the course of these allegations that John Cali was present
20 somewhere. There is no indication nor is there any evidence
21 that he did anything other than be present at the time.

22 As far as being allegedly a major participant
23 in any sort of scheme, from my knowledge of John Cali,
24 his limited mental capacity would make it highly unlikely
25 that he would be a major participant in any sort of scheme

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Cali

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1 whatsoever. I think that he has functioned on the level
2 that he is capable of functioning within society, and I
3 think he has functioned well, and I respectfully suggest
4 to the Court that a man of his age, who has had just this
5 one conflict with the law, should be afforded some sort
6 of leniency and some sort of opportunity prove himself
7 to the Court and to prove his ability to remain within
8 society and to function as such, and I once again
9 respectfully commend him to the Court for such leniency
10 as the Court may show to him.
11

12 THE COURT: This defendant is before the Court
13 having admitted his guilt dealing with narcotics and subject
14 to a maximum imprisonment term of 15 years and/or a
15 \$25,000 fine, together with a minimum 3-year special
16 parole if imprisoned.

17 There is no question about the defendant's
18 guilt. He has admitted it. The only thing that he says
19 about it is that he is not a drug user, and he characterizes
20 his actions as foolish and stupid.

21 Not being a drug user, there is no excuse
22 whatever for having entered into this kind of activity for
23 profit, to the destruction and disaster of the people
24 who fall heir to these nefarious drugs that he was
25 parceling out in combination with others.

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2 It is the judgment of the Court that the
3 defendant be committed to the custody of the Attorney
4 General or his authorized representative on count 4 for
5 a term of 4 years, and pursuant to the provisions of
6 Section 841 of Title 21 of the United States Code the
7 defendant is placed on special parole for a term of 3 years
8 to commence upon expiration of confinement.

9 There are open counts against this defendant
10 and a motion may be made in connection with them.

11 MR. SCHATZ: The Government would consent that
12 the open counts be dismissed at this time with respect to
13 Mr. Cali.

14 THE COURT: Do you make that motion, Mr.
15 Mordkofsky?

16 MR. MORDKOFSKY: Yes, if the Court pleases.

17 THE COURT: The motion is granted.

18 There is also an open indictment, 75 Criminal
19 768.

20 MR. SCHATZ: Your Honor, the Government is in
21 a position now to orally move to nolle that indictment.

22 THE COURT: 75 Criminal 768 is accordingly
23 nolle on motion of the Government.

24 MR. SCHATZ: Your Honor, at this time the
25 Government would ask that the defendant John Cali be

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2 remanded.

3 THE COURT: The defendant is remanded.

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A 201 Affidavit of Service by Mail
COURT OF APPEALS
FOR THE SECOND DCIRCUIT

LUTZ APPELLATE PRINTERS, INC.

UNITED STATES OF AMERICA,

- against -

JOHN CLA CALI.,
Defendant- Appellant.

Index No.

Affidavit of Service by Mail

STATE OF NEW YORK, COUNTY OF NEW YORK ss:

I, Eugene L. St. Louis, being duly sworn, depose and say that deponent is not a party to the action, is over 18 years of age and resides at 1235 Plane Street, Union, New Jersey 07083. That on the 28th day of October 1976 deponent served the annexed

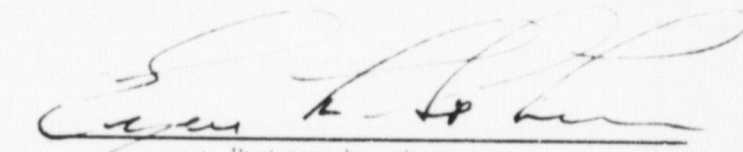
Brief & Appenmdix ^{upon} Robert B. Fiske Jr. attorney(s) for
in this action, at One St. Andrews Plaza, New York, New York

the address designated by said attorney(s) for that purpose by depositing a ²true copy^s of same, enclosed in a postpaid properly addressed wrapper in a Post Office Official Depository under the exclusive care and custody of the United States Post Office Department, within the State of New York.

Sworn to before me, this 28th
day of October 19 76

Beth A. Hirsh

BETH A. HIRSH
NOTARY PUBLIC, State of New York
NO. 41-4623106
Qualified in Queens County
Commission Expires March 30, 1978


Print name beneath signature
Eugene L. St. Louis